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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,645	02/05/2001	Sean Reveille Llewelyn	P.19077	8310

7590

09/26/2005

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EXAMINER

KESACK, DANIEL

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/775,645

Applicant(s)

LLEWELYN, SEAN REVEILLE

Examiner

Dan Kesack

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

The present application claims priority to provisional application 60/180,125 filed February 3, 2000.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 recites the limitation "nominal value" in line 29. There is insufficient antecedent basis for this limitation in the claim. The phrase "nominal value" is not cited in any claim from which claim 11 depends.
3. Claim 11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Lines 29-30 recite, "wherein the nominal value of each contract is a proportion of the median, or other representative, price of properties". The term "or other representative" fails to clearly define and limit the claimed invention.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

35 USC 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" (emphasis added).

Claims 1-11 are rejected under 35 U.S.C. 101 because; the claimed invention is directed to a non-statutory subject matter. Specifically the method claims as presented do not claim a technological basis in the pre-amble and the body of the claim. Without a claimed basis, the claim may be interpreted in an alternative as involving no more than a manipulation of an abstract idea and therefore non-statutory under 35 U.S.C. 101. In contrast, a method claim that includes in the body of the claim structural / functional interrelationship which can only be computer implemented is considered to have a technological basis [See Ex parte Bowman, 61 USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001) - used only for content and reasoning since not precedential].

In order to over come the 101 rejection above, the following preamble is suggested:

"A computer implemented method for ---", or something similar. Also, in the body of the claim, include structural / functional interrelationship which can only be computer implemented.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3624

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1, 3-6, and 7-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Miller's article "Property Price Futures and Options" in view of Rothstein U.S.

Patent No. 5,636,117

8. Miller teaches a futures and options market for properties, in which contracts are created, based on an index, and are traded on an exchange. Miller fails to teach the method by which the index is generated, and from where the data for generating the index is derived.

9. Claim 1, Rothstein discloses a method for monitoring the strength of a real estate market, the method including "the gathering of sales figures for the part of the market in question over a specified period" (column 2 lines 21-23), the part of the market corresponding to a defined geographical area, and using these sales figures to calculate a market index (column 3, lines 56-59). It would be obvious to one of ordinary skill in the art at the time of the Applicant's invention to incorporate Rothstein's method into Miller's teachings in order to establish a suitable index upon which the property futures and options market can be based.

10. Claim 7, Rothstein further teaches that the "market index may be modified such that the average selling price of a property in the market is taken into account" (column 2 lines 62-64). It would be obvious to one of ordinary skill in the art at the time of the Applicant's invention to incorporate Rothstein's method into Miller's teachings so as to create an index representative of the average price of property.

11. Claims 8 and 9, Rothstein describes the raw data for the method can be obtained from a real estate broker's multiple-listing service (MLS) or realtor's association, which contain official records, and that most geographical regions of the United States have an MLS which tracks and compiles information regarding the real estate market of the area. (column 3 lines 55-60). It would be obvious to one of ordinary skill in the art at the time of the Applicant's invention to incorporate Rothstein's method into Miller's teachings in order to assure that the index is derived from accurate, timely data, and that the data is geographically specific, as the data of different geographic areas may vary drastically.

12. Claims 3-6 and 10, the Miller/Rothstein combination fails to teach the features of requiring a deposit margin, using a trade algorithm, restriction of trading to traders who have taken a position prior to an event, that event being a spot month, and the method by which margin deposits are debited and credited according to daily settlement prices.

Official notice is taken that the use of deposit margins, trade algorithms, trading and restrictions based on the timing of the trade are old and well known in the art.

It would be obvious to one of ordinary skill in the art at the time of the Applicant's invention to incorporate these features of into Rothstein's method and Miller's teachings in order to properly govern and settle the property futures and options market, just as any derivatives market is maintained on a daily basis. Deposit margins assure that no trader defaults on an account on a daily basis. Trade algorithms are required to match buyers and sellers in a market exchange. Incorporating trading restrictions defined in claims 5 and 6 would be an obvious feature so as to maintain integrity in the market among traders.

12. Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Miller and Rothstein as applied to claim 1 above, and further in view of Wilton et al. U.S. Patent No. 6,519,574.

13. Claim 2, Miller and Rothstein fail to teach the step of ensuring credit worthiness between traders.

14. Wilton describes an electronic trading system in which bilateral credit availability must be established between traders in order to complete a trade. The trading entities may be individual banks and trading institutions and/or groups of banks and trading institutions, with bank accounts and bank deposits. It would have been obvious to one of ordinary skill in the art at the time of the Applicants invention to incorporate this feature in order to lower the default risk involved in the trading process.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Kesack whose telephone number is 571-272-5882. The examiner can normally be reached on M-F, 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 571-272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**HANI M. KAZIMI
PRIMARY EXAMINER**